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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

VELMA GOODSPEED, Plaintiff and Appellant, v. CAREER SYSTEMS DEVELOPMENT CORPORATION, Defendant and Respondent.	C058733 (Super. Ct. No. 06AS01332)

When plaintiff Velma Goodspeed altered another employee's timecard, her employer (defendant Career Systems Development Corporation) fired her. Plaintiff challenged her termination by filing a lengthy complaint, and defendant subsequently moved for summary judgment. Plaintiff conceded summary adjudication was proper on seven of her eight causes of action, but argued that her complaint stated a valid claim for termination in violation of public policy because she had altered the employee's time card only to prevent fraud in a government-funded program. The trial court granted summary judgment and entered judgment in favor of defendant.

On appeal, plaintiff reiterates her claim that triable issues of fact remain on her cause of action for termination in violation of public policy. We disagree, and affirm the judgment.

SUMMARY JUDGMENT STANDARD

As this court succinctly described, "[s]ummary judgment is properly granted if there is no question of fact and the moving party is entitled to judgment as a matter of law. [Citations.] We construe the moving party's papers strictly and the opposing party's papers liberally. [Citation.] The moving party must demonstrate that under no hypothesis is there a material factual issue requiring a trial, whereupon the burden of persuasion shifts to the opposing party to show, by responsive statement and admissible evidence, that triable issues of fact exist. [Citations.]

"However, '[f]rom commencement to conclusion, the moving party bears the burden of persuasion that there is no genuine issue of material fact and that [it] is entitled to judgment as a matter of law. . . . There is a genuine issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.' [Citation.] On appeal, we exercise our independent judgment to determine whether there are no triable issues of material fact and the moving party thus is entitled to judgment as a matter of law." (*Thousand Trails, Inc. v. California*

Reclamation Dist. No. 17 (2004) 124 Cal.App.4th 450, 457; see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843-857.) Under this de novo standard of review, the trial court's reasoning is irrelevant, and we will affirm on any ground supported by the record. (*Jimenez v. County of Los Angeles* (2005) 130 Cal.App.4th 133, 140.)

"For practical purposes, an issue of *material* fact is one which, in the context and circumstances of the case, 'warrants the time and cost of factfinding by trial.' [Citation.] In other words, not every issue of fact is worth submission to a jury. The purpose of summary judgment is to separate those cases in which there are *material* issues of fact meriting a trial from those in which there are no such issues." (*Eisenberg v. Alameda Newspapers, Inc.* (1999) 74 Cal.App.4th 1359, 1375.)

"'The admissions of a party receive an unusual deference in summary judgment proceedings. An admission is binding unless there is a credible explanation for the inconsistent positions taken by a party. [Citations.]' [Citation.] '[W]hen such an admission [against interest] becomes relevant to the determination, on motion for summary judgment, of whether or not there exist triable issues of *fact* (as opposed to legal issues) between the parties, it is entitled to and should receive a kind of deference not normally accorded evidentiary allegations in affidavits.' [Citation.]" (*People ex rel. Dept. of Transportation v. Ad Way Signs, Inc.* (1993) 14 Cal.App.4th 187, 200.)

FACTS AND PROCEEDINGS

Defendant operates an educational and vocational training program for youth, and contracts with the United States Department of Labor to run its center. Plaintiff worked for defendant from 1987 to 1994, and again from 1998 until she was terminated from her position in November 2004. At the time of her firing, plaintiff worked as a senior cook in the center's kitchen.

Plaintiff acknowledged receiving a copy of the employee handbook, which specified that she was an at-will employee. The handbook outlined various work rules, including that completing another employee's timecard was a dischargeable offense.

On Sunday, October 10, 2004, plaintiff worked in the kitchen with another employee, Martha Castro. After five and one-half hours, Castro left work and marked her timecard as having worked eight hours. Plaintiff asked Castro about this discrepancy, and Castro said her supervisors had given her permission to claim eight hours.

When plaintiff finished her own shift, she saw Castro's time card sitting on the top of the folder. Plaintiff crossed out Castro's claim for eight hours and wrote in what she believed to be the actual number of hours worked. Plaintiff did not get approval from her supervisors to make such a correction, nor did she otherwise report the discrepancy on Castro's timecard before making the change.

Castro discovered that her timecard had been altered and reported it to her supervisors. In her deposition, plaintiff readily acknowledged that Castro reported the incident before she did. On October 20, 2004, two of plaintiff's superiors met with plaintiff, and plaintiff admitted changing Castro's time card. Defendant fired plaintiff on November 24, 2004, for a "policy violation--completing another employee's timecard."

Plaintiff filed a complaint challenging her termination. Defendant moved for summary judgment and plaintiff conceded that summary judgment was appropriate on seven of her eight causes of action. However, she asserted that her complaint stated a valid cause of action for wrongful termination in violation of public policy. This particular cause of action alleged that her firing was unlawful "because it was in violation of the public policy of California and the public policy articulated in federal law, including without limitation, 18 U.S.C. section 641 [unlawful to embezzle or steal government property] and 31 U.S.C. section 3729 [unlawful to make false claims against the government], in that Plaintiff was terminated for attempting to prevent/correct/report another employee's fraud/misreporting of time worked for Plaintiff's federally funded employer."

In her deposition, plaintiff admitted that it was not her responsibility to review or sign off on the timecards of other employees and she acknowledged that management had never told her that she could change another employee's timecard. She further acknowledged that she was not a supervisor and had no power to discipline, hire, or fire other employees. However,

she asserted that she was "responsible for whatever went on there in the kitchen on the weekends."

The trial court granted defendant's motion for summary judgment, concluding that plaintiff could not state a claim for termination in violation of public policy. Defendant appeals from the ensuing judgment.

DISCUSSION

An employment contract is generally terminable at the will of either party. (Lab. Code, § 2922.) However, an employer cannot discharge an employee in violation of a substantial, fundamental public policy that is reflected in constitutional, statutory or, in some cases, regulatory provisions. (See generally *Green v. Ralee Engineering Co*. (1998) 19 Cal.4th 66, 71-72, 75-85; *Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1090.) "The difficulty . . . lies in determining where and how to draw the line between claims that genuinely involve matters of public policy, and those that concern merely ordinary disputes between employer and employee." (*Gantt*, at p. 1090.) Cases finding a violation of public policy typically involve one of four types of conduct: "(1) refusing to violate a statute [citations]; (2) performing a statutory obligation; [citation]; (3) exercising a statutory right or privilege [citation]; and (4) reporting an alleged violation of a statute of public importance [citations]." (*Id.* at pp. 1090-1091, fn. omitted.) Employment actions that fall into this latter category are often

referred to as "whistle-blower cases." (See, e.g., *Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1258.)

Plaintiff frames her case as one involving whistleblower protections. She asserts that she was fired for reporting illegal conduct and throughout her brief she characterizes her actions in this vein. She cites numerous cases in which courts have reiterated that an employer cannot fire an employee who reports suspected violations of statutes involving matters of fundamental and substantial public importance. (E.g., *Colores v. Board of Trustees* (2003) 105 Cal.App.4th 1293, 1312-1313; *Holmes v. General Dynamics Corp.* (1993) 17 Cal.App.4th 1418, 1424-1425.) Plaintiff correctly states the law. It is her application of the law to her case that is faulty.

Setting aside defendant's other challenges to plaintiff's cause of action, we focus on one fundamental deficiency in plaintiff's appeal: plaintiff was not fired for reporting illegal activity. She was fired because she resorted to self-help and changed another employee's timecard without any authority to do so.

In her own deposition, plaintiff stated that she believed she was responsible for "whatever went on . . . in the kitchen on the weekends" but she admitted that she was not a supervisor and had no responsibility to review or sign off on the timecards of other employees. She also acknowledged that her supervisors had never told her that she could do so. These admissions are binding. (*People ex rel. Dept. of Transportation v. Ad Way Signs, Inc., supra*, 14 Cal.App.4th at p. 200.)

If, rather than changing Castro's time card, plaintiff had simply brought this matter to the attention of supervisors and defendant then fired her for this whistle-blowing activity, plaintiff might, theoretically, have had a valid claim for wrongful termination. But that is not what happened. Plaintiff did not engage in whistleblowing; instead, she took it upon herself to change another employee's timecard, and defendant fired plaintiff for this unilateral, unauthorized action.

Because the undisputed facts do not support a cause of action for termination in violation of public policy, summary adjudication of this cause of action was proper.

DISPOSITION

The judgment is affirmed. Defendant is awarded its costs on appeal.

HULL, J.

We concur:

BLEASE, Acting P. J.

NICHOLSON, J.